UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PHILIP BROOKS, Plaintiff, v. WAL-MART STORES, INC.; JOHN DOES; MARY DOE; ABC BUSINESS ENTITIES and XYZ CORPORATIONS, Defendants.	1:18-cv-1428-NLH-KMW **OPINION**

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HILLMAN, District Judge

This matter comes before the Court on motion of Wal-Mart Stores, Inc. ("Defendant") for entry of summary judgment in its favor. (ECF No. 19). Philip Brooks ("Plaintiff") opposes Defendant's motion. (ECF No. 21). Also before the Court is Plaintiff's motion to seal certain documents, which Defendant does not oppose. (ECF No. 25). For the reasons that follow, Defendant's motion for summary judgment will be granted and Plaintiff's motion to seal will be denied, without prejudice.

BACKGROUND

The Court takes its facts from the parties' statements submitted pursuant to Local Civil Rule 56.1(a). The Court notes relevant disputes where necessary.

On the morning of July 11, 2016, Plaintiff visited a Walmart store in Mays Landing, New Jersey. (ECF No. 19-2 ("Def. SOMF") at ¶¶2, 7). Plaintiff knew the store well as he had visited it many times before. (Def. SOMF at ¶8). After acquiring a shopping cart, Plaintiff entered the store, located the items he wished to purchase, and began traveling towards the front of the store to check out. (Def. SOMF at ¶¶10-16). While in route to the checkout area, Plaintiff walked through the men's clothing department. (Def. SOMF at ¶17). Plaintiff turned his shopping cart down an aisle he describes as "tight"

due to the arrangement of various clothing displays. (Def. SOMF at ¶¶19-20).

Undeterred by the lack of space, Plaintiff continued down the aisle until encountering two unaccompanied shopping carts partially blocking his path. (Def. SOMF at ¶¶22-24, 29-30). Instead of choosing a different route or attempting to move the impeding carts, Plaintiff attempted to maneuver around them. (Def. SOMF at ¶¶31-32). While Plaintiff successfully negotiated his way around the first cart, his journey around the second cart was less successful. (Def. SOMF at ¶33). While attempting to maneuver around the second cart, Plaintiff struck his left foot on a bench used for trying on footwear (a "shoe bench"),[1] injuring his toes and foot.[2] (Def. SOMF at ¶¶34-35, 42).

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[1] The parties agree the shoe bench was located directly adjacent to the endcap of a display unit. Whether it was attached to the display unit or not remains unclear.

[2] Defendant argues that Plaintiff has not testified consistently regarding the object he struck. Plaintiff rejects Defendant's assertion. (ECF No. 21 at ¶18) ("Plaintiff consistently testified that he struck his foot on a self-service shoe bench."). While Defendant would disagree, Plaintiff consistently explained that he struck his foot on a shoe bench; he could not, however, ascertain the way his foot struck the bench. See (ECF No. 19-5 ("Pl. Dep.") at T64:11-19) ("Q: And you hit a portion of the base of the bench? A: Yes. More than likely, I couldn't see what I hit"); (T84:10-18) (responding to questions regarding what part of the bench he struck, Plaintiff testified "I couldn't see. . . . I couldn't see, I didn't see it when I hit. I would imagine I hit it on the bottom part"); (T91:13-14) ("I hit it on the bench, but where, I don't know. Not sure."). As the non-moving party, the Court will credit

Plaintiff describes the shoe bench as being approximately three-and-one-half feet wide and approximately one-and-a-half feet tall. (Def. SOMF at ¶41). Plaintiff does not contend the bench was blocking the aisle he was walking in.[3] (Def. SOMF at ¶36).

After striking his foot, Plaintiff continued to the front of the store to report the incident. An incident report was completed, and Plaintiff left the store without requiring medical attention.

On February 1, 2018, Defendant removed this action from the

Plaintiff's proffered version of the incident for purposes of resolving Defendant's motion. In the end, the dispute is not a material one.

[3] Plaintiff denies this factual contention and directs the Court to his counterstatement of material facts at paragraphs two, eighteen, and twenty-two. Paragraph two states that the bench was "sticking out into the aisle." (ECF No. 21 at ¶2). That paragraph cites to Plaintiff's complaint in support of that assertion. An unverified complaint, however, is not sufficient supporting evidence under Local Civil Rule 56.1. As such, paragraph two will be ignored. Paragraph eighteen states that "Plaintiff consistently testified he struck his foot on a self-service shoe bench." (ECF No. 21 at ¶18). Paragraph eighteen does not support a finding that the bench was sticking out into the aisle; certainly, Plaintiff could have struck an object without that object being in the aisle. As such, paragraph eighteen must also be ignored. Paragraph twenty-two refers to shopping carts and no bench at all. As such, it too must be ignored. Indeed, the record directly contradicts Plaintiff's denial of this fact. When Plaintiff was asked at his deposition whether he contended that "the bench itself was . . . blocking the aisle somewhat" he responded "No." (T92:23-25). Plaintiff has not adequately supported his denial of this fact through record evidence and it will be accepted as true over his objection.

Superior Court of New Jersey to this Court. (ECF No. 1). Plaintiff's complaint, although purporting to assert two separate claims, alleges only that Defendant was negligent in permitting "hazards . . . to exist in the aisle while patrons such as the Plaintiff were utilizing same, causing Plaintiff to bump his foot and become injured." See (ECF No. 1-2 at ¶5). The parties have fully briefed Defendant's motion for summary judgment and Plaintiff's motion to seal, and they are, therefore, ripe for adjudication.

DISCUSSION

I. Subject Matter Jurisdiction

This Court exercises subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

II. Legal Standard – Summary Judgment

Summary judgment is appropriate where the Court is satisfied that "'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any,' . . . demonstrate the absence of a genuine issue of material fact" and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (citing Fed. R. Civ. P. 56).

An issue is "genuine" if it is supported by evidence such that a reasonable jury could return a verdict in the nonmoving

party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if, under the governing substantive law, a dispute about the fact might affect the outcome of the suit. Id. "In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence 'is to be believed and all justifiable inferences are to be drawn in his favor.'" Marino v. Indus. Crating Co., 358 F.3d 241, 247 (3d Cir. 2004) (citing Anderson, 477 U.S. at 255).

Initially, the moving party bears the burden of demonstrating the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323 ("[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."); see Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 192 n.2 (3d Cir. 2001) ("Although the initial burden is on the summary judgment movant to show the absence of a genuine issue of material fact, 'the burden on the moving party may be discharged by "showing"--that is, pointing

out to the district court—–that there is an absence of evidence to support the nonmoving party's case' when the nonmoving party bears the ultimate burden of proof." (citing Celotex, 477 U.S. at 325)).

Once the moving party has met this burden, the nonmoving party must identify, by affidavits or otherwise, specific facts showing that there is a genuine issue for trial. Celotex, 477 U.S. at 324. A "party opposing summary judgment 'may not rest upon the mere allegations or denials of the . . . pleading[s].'" Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001). For "the non-moving party[] to prevail, [that party] must 'make a showing sufficient to establish the existence of [every] element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Cooper v. Sniezek, 418 F. App'x 56, 58 (3d Cir. 2011) (citing Celotex, 477 U.S. at 322). Thus, to withstand a properly supported motion for summary judgment, the nonmoving party must identify specific facts and affirmative evidence that contradict those offered by the moving party. Anderson, 477 U.S. at 257.

III. Analysis

Defendant argues summary judgment is appropriate because (1) Plaintiff can only speculate as to the cause of his injuries;[4] (2) the conditions identified by Plaintiff are not dangerous conditions because (a) the aisle was not in unreasonably dangerous condition, (b) shopping carts are not inherently dangerous instrumentalities, and (c) a bench of the type Plaintiff identifies is not an unreasonably dangerous condition; and (3) Defendant did not have actual or constructive notice of any purportedly dangerous condition.

Plaintiff argues that (1) issues of fact remain, requiring denial of Defendant's motion, and (2) the mode-of-operation doctrine applies, negating any need for Plaintiff to prove Defendant had constructive notice of the dangerous condition.

"In New Jersey, . . . it is widely accepted that a negligence cause of action requires the establishment of four elements: (1) a duty of care, (2) a breach of that duty, (3)

[4] Defendant argues that Plaintiff's claim must fail because he is unsure "what he struck" and cannot "establish whatever it was constituted a breach of duty or hazardous condition from which Walmart should have protected him." (ECF No. 19-1 ("Def. Br.") at 11). Plaintiff's deposition testimony sufficiently explains that he struck his foot on a shoe bench; while Plaintiff may not be able to identify what portion of the bench he struck, the Court is satisfied that sufficient facts exist to reject Defendant's motion for summary judgment to the extent it relies on this argument. See footnote two, supra.

actual and proximate causation, and (4) damages." Senisch v. Tractor Supply Co., No. 16-cv-47, 2018 WL 324717, at *4 (D.N.J. Jan. 8, 2018), appeal dismissed, No. 18-1265, 2018 WL 3933746 (3d Cir. Apr. 23, 2018) (quoting Jersey Cent. Power & Light Co. v. Melcar Util. Co., 59 A.3d 561, 571 (N.J. 2013)).

"Business owners owe to invitees a duty of reasonable or due care to provide a safe environment for doing that which is within the scope of the invitation." Senisch, 2018 WL 324717, at *5 (quoting Nisivoccia v. Glass Gardens, Inc., 818 A.2d 314, 316 (N.J. 2003)). "The duty of due care requires a business owner to discover and eliminate dangerous conditions, to maintain the premises in safe condition, and to avoid creating conditions that would render the premises unsafe." Id. (quoting Nisivoccia, 818 A.2d at 316).

"Ordinarily, an injured plaintiff asserting a breach of that duty must prove, as an element of the cause of action, that the defendant had actual or constructive knowledge of the dangerous condition that caused the accident." Id. (quoting Nisivoccia, 818 A.2d at 316). If the mode-of-operation doctrine applies, however, Plaintiff is relieved of making such a showing.

Plaintiff claims this is a mode-of-operation case in which he need not prove actual or constructive notice. Accordingly,

this Court must first determine whether this is an appropriate case in which to apply the mode-of-operation doctrine.

A. The Mode-of-Operation Doctrine Does Not Apply

Under the mode-of-operation doctrine, New Jersey relieves a plaintiff from the burden of proving constructive notice "in circumstances in which, as a matter of probability, a dangerous condition is likely to occur as the result of the nature of the business, the property's condition, or a demonstrable pattern of conduct or incidents." Senisch, 2018 WL 324717, at *5 (citing Brown v. Racquet Club of Bricktown, 471 A.2d 25, 29 (N.J. 1984)). "In those circumstances, [the New Jersey Supreme Court] ha[s] accorded the plaintiff an inference of negligence, imposing on the defendant the obligation to come forward with rebutting proof that it had taken prudent and reasonable steps to avoid the potential hazard." Id. (quoting Brown, 471 A.2d at 29).

However, the mode-of-operation doctrine does not apply in every circumstance, and as this Court has recognized, New Jersey declines to apply the mode-of-operation doctrine in situations, like the one before this Court, in which a plaintiff is injured by a shopping cart or a shoe bench. As for shopping carts:

> We are unable to say that a substantial risk of injury is implicit, or inherent, in the furnishing of shopping carts to patrons by a store proprietor. Shopping carts are not dangerous instrumentalities,

> and they are uniquely suitable for the purpose for which furnished. Shop–Rite was under a legal duty of exercising ordinary care to furnish a reasonably safe place and safe equipment for its patrons consistent with its operation and the scope of its invitation. It is not an insurer of the safety of its patrons. The issue is not merely whether it was foreseeable that patrons, or other third parties, would negligently or intentionally misuse shopping carts, but whether a duty exists to take measures to guard against such happenings. . . .
>
> Every human activity involves some risk of harm, but the reasonable probability of having other than a minor accident from the use of carts in Shop–Rite's operation does not give rise to a duty to take measures against it. So viewed, we find that plaintiff has failed to carry the burden of showing a breach of duty on Shop–Rite's part in furnishing its patrons with carts under the circumstances here existing.

Senisch, 2018 WL 324717, at *7 (quoting Znoski v. Shop–Rite Supermarkets, Inc., 300 A.2d 164, 165-66 (N.J. Super. Ct. App. Div. 1973)).

As for injuries caused by a shoe bench, the Superior Court of New Jersey, Appellate Division, has explicitly held that such "is not a situation . . . in which the mode-of-operation rule applies." Carney v. Payless Shoesource, Inc., No. A-2680-07T2, 2009 WL 425822, at *1–2 (N.J. Super. Ct. App. Div. Feb. 24, 2009). As the Appellate Division explained,

> [i]n spillage cases, for example, involving substances on the floor of the produce aisle of a supermarket, the potential hazard is not readily noticeable to a patron whose attention is naturally focused elsewhere. It is probable that produce will fall on the floor in that business. That patrons may step on slippery

> substances because they are looking at shelves or in bins is a known hazard.

Id. Therefore, in spillage cases, the mode-of-operation doctrine may apply. See Id.

Shoe benches, however, are quite large and readily noticeable, negating the need to apply the mode-of-operation doctrine. As the Appellate Division recognized, "two-foot by two-foot portable shoe benches for use by customers who try on merchandise do not raise a substantial risk inherent in defendant's mode of doing business. Any reasonably prudent person would observe, in light of the dimensions of the benches, their presence in his or her lane of travel." Id.

In this case, while the shoe bench at issue may or may not have been of the portable kind at issue in Carney, the dimensions of the two are strikingly similar. Like the court in Carney, this Court finds that a reasonably prudent person would have seen the shoe bench, and therefore, there is no inherent, latent harm requiring application of the mode-of-operation doctrine. As such, this Court concludes the mode-of-operation doctrine does not apply in this case; to prevail, Plaintiff must establish the traditional elements of negligence, including that Defendant had actual or constructive notice of a dangerous condition.

B. Plaintiff Has Not Established Defendant Had Actual or Constructive Notice of A Dangerous Condition

Defendant argues Plaintiff presents no evidence supporting a finding that Defendant had actual or constructive notice of a dangerous condition. Plaintiff does not argue Defendant had actual notice of any dangerous condition,[5] but argues Defendant had constructive notice because (1) Plaintiff identified the object he injured his foot on, (2) Plaintiff produced evidence of what caused the injury, (3) the injury occurred in a busy section of the store, (4) Defendant has a duty to identify safety concerns, (5) the objects causing Plaintiff's injuries are self-service in nature, and (6) an employee of Defendant was "in the area of [the] bench just preceding [Plaintiff's] injury." (ECF No. 21 at 7-10). None of these assertions, even if true, satisfy the elements Plaintiff must establish.

1. Plaintiff Has Not Established A Dangerous Condition Existed

Plaintiff argues that the issue of whether a dangerous condition existed is a question of fact left to a jury. Defendant argues that no reasonable jury could find the

[5] Setting aside Plaintiff's waiver of this issue, there is no evidence in the record indicating prior incidents of this type, and Defendant's corporate representative testified that he never witnessed a bench being out of place in the store. (ECF No. 21-4 ("Trotta Dep.") at T38:7-9).

conditions presented were dangerous. The Court agrees with Defendant.

"The dangerous condition question is generally one of fact to be decided by a jury." Charney v. City of Wildwood, 732 F. Supp. 2d 448, 454 (D.N.J. 2010) (citing Vincitore v. N.J. Sports & Exposition Auth., 777 A.2d 9, 11-12 (N.J. 2001)). "However, like any question of fact, this determination is subject to a preliminary assessment by the court as to whether it can reasonably be made by a jury considering the evidence." Id. (citing Vincitore, 777 A.2d at 11-12). Therefore, the Court must determine whether the evidence is such that a reasonable jury could determine that any defect amounted to a dangerous condition.

A "dangerous condition" is a "condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used." Morales by & through Fernandez v. Sussex Cty. Cmty. Coll., No. A-0305-15T4, 2017 WL 3722530, at *5 (N.J. Super. Ct. App. Div. Aug. 30, 2017) (citation omitted). The dangerous condition "must be inherent in the property[,]" Weiser v. County of Ocean, 740 A.2d 1117, 1120 (N.J. Super. Ct. App. Div. 1999), which will not be considered dangerous if the condition only exists when the property is used without due

care. Garrison v. Twp. of Middletown, 712 A.2d 1101, 1103-04 (N.J. 1998). Whether a dangerous condition exists "depends on whether the property creates a substantial risk of injury to persons generally who would use the property with due care in a foreseeable manner." Id. at 1106 (citation omitted).

New Jersey courts have held that shoe benches are not inherently dangerous instrumentalities, and when used with due care, the Court cannot conceive how they may be inherently dangerous. See Carney, 2009 WL 425822, at *1–2 ("two-foot by two-foot portable shoe benches for use by customers who try on merchandise do not raise a substantial risk inherent in defendant's mode of doing business. Any reasonably prudent person would observe, in light of the dimensions of the benches, their presence in his or her lane of travel.").

The same is true for shopping carts. See Senisch, 2018 WL 324717, at *7 (quoting Znoski, 300 A.2d at 165-66) ("We are unable to say that a substantial risk of injury is implicit, or inherent, in the furnishing of shopping carts to patrons by a store proprietor. Shopping carts are not dangerous instrumentalities, and they are uniquely suitable for the purpose for which furnished."). As such, Plaintiff must prove some other circumstance rendered these objects dangerous.

Plaintiff appears to argue that the bench being out of place or the carts being in his way may be facts, which when taken together, render these objects dangerous. That argument is unpersuasive. As for the shopping carts, Plaintiff could easily have moved the carts from his path or selected another route of travel. His election not to do so does not render shopping carts dangerous.

As for the shoe bench, Plaintiff recognizes that, at most, the shoe bench he struck was "maybe an inch or two" beyond the endcap at the time he struck it. (Def. SOMF at ¶43) (citing T90:22 – T91:1) (Q: "[H]ow far out was that bench sticking out at the time of your incident? A: I would say maybe an inch or two."). New Jersey courts hold that "minor imperfections" or minor defects will not give rise to an actionable claim. See Chamberlain v. City of Wildwood, No. A-3424-12T1, 2013 WL 5777832, at *4 (N.J. Super. Ct. App. Div. Oct. 28, 2013); see also Charney, 732 F. Supp. 2d at 456 (finding that "not every defect" is actionable and citing cases for same). In this case, no reasonable jury could find that Defendant was negligent in failing to search out and cure a minor defect – a bench that may have been an inch or two out of place. On that basis alone, summary judgment would be appropriate.

2. Plaintiff's Action Also Fails Because He Has Not Established Defendant Had Constructive Notice Of Any Allegedly Dangerous Condition

A defendant has constructive notice of a dangerous condition when it exists "for such a length of time as reasonably to have resulted in knowledge and correction had the defendant been reasonably diligent." Troupe v. Burlington Coat Factory Warehouse Corp., 129 A.3d 1111, 1114 (N.J. Super. Ct. App. Div. 2016) (quoting Parmenter v. Jarvis Drug Stores, Inc., 138 A.2d 548, 550 (N.J. Super. Ct. App. Div. 1957)). Constructive notice can be inferred in various ways, including the characteristics of the dangerous condition giving rise to the incident. Id. (citing Tua v. Modern Homes, Inc., 165 A.2d 790, 795 (N.J. Super. Ct. App. Div. 1960)) (finding constructive notice where substance causing a patron to fall appeared dried onto the floor). Additionally, a plaintiff may present eyewitness testimony regarding the dangerous condition to establish the length of time it was present. Id. (citing Grzanka v. Pfeifer, 694 A.2d 295, 300-01 (N.J. Super. Ct. App. Div. 1997), certif. denied, 713 A.2d 498 (N.J. 1998)) (finding constructive notice where eyewitness noted the dangerous condition was present for an extended period).

Plaintiff does not present any evidence regarding how long the bench had allegedly been out of place. Instead, Plaintiff

argues that an employee of Defendant was "in the area of [the] bench" (ECF No. 21 at 8), and, so the argument would go, should have (1) noticed the bench was out of place and (2) moved it back to its proper location. However, simply explaining that an employee was in the area where an incident occurred, without more, is not enough to establish constructive notice; indeed, such facts do not explain how long the dangerous condition may have existed or that Defendant had an opportunity to correct it. See Troupe, 129 A.3d at 1114. Because there is no proof in the record suggesting (1) the bench was out of place for an extended period of time and (2) Defendant had a reasonable opportunity to correct its placement, constructive notice has not been established and Plaintiff's claim must fail.

IV. Plaintiff's Motion To Seal

Plaintiff moves to seal three exhibits to its opposition to Defendant's motion for summary judgment. (ECF No. 25). Specifically, Plaintiff seeks to seal Exhibits F, G, and I to its opposition papers. These documents contain what appear to be Defendant's janitorial guidelines. Defendant do not oppose Plaintiff's motion. For the reasons that follow, Plaintiff's motion must be denied, without prejudice.

Local Civil Rule 5.3 governs requests to seal documents filed with the Court. To succeed on a motion to seal, the

moving party must describe: (1) the nature of the materials at issue; (2) the legitimate private or public interests that warrant the relief sought; (3) the clearly defined and serious injury that would result if the relief sought is not granted; and (4) why a less restrictive alternative to the relief sought is not available. L. Civ. R. 5.3(c)(3). While it is within the Court's authority to restrict public access to information, it is well-settled that there is a "common law public right of access to judicial proceedings and records." In re Cendant Corp., 260 F.3d 183, 192 (3d Cir. 2001). The moving party bears the burden to overcome this presumption of public access and must demonstrate that "good cause" exists for the protection of the material at issue. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994). Good cause exists only when the moving party makes a particularized showing that disclosure will cause a "clearly defined and serious injury." Id. Good cause is not established where a party merely provides "broad allegations of harm, unsubstantiated by specific examples or articulated reasoning." Id. (quoting Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986)).

Plaintiff's motion states that the materials to be sealed "contain confidential information regarding Wal-Mart's business practices and are subject to a Discovery Confidentiality Order

between the Parties[.]" (ECF No. 25 at 1; ECF No. 25-1 at ¶1). However, "just because a document is marked confidential and subject to a protective order, does not automatically mean a document can be sealed. The document must still satisfy the standard set forth in Rule 5.3." Vista India, Inc. v. Raaga, LLC, No. 07-1262, 2008 U.S. Dist. LEXIS 24454, *9, n.2 (D.N.J. Mar. 27, 2008). Indeed, in this case, the relevant confidentiality order provides that "Confidential Material may be filed with the Court. Should any party have good cause to seal from public view any Confidential Material that is filed with the Court, that party must file a separate and specific motion for such protection." (ECF No. 13 at ¶12). Therefore, to the extent Plaintiff's motion suggests the existence of a confidentiality order mandates sealing, that motion fails.

The Court has reviewed the material Plaintiff wishes to seal. This material relates to Defendant's strategies for cleaning and monitoring the cleanliness of its stores. In the first instance, the Court ponders why Plaintiff has any interest at all in sealing discovery produced by Defendant that is not personal to Plaintiff. To seal material filed with the Court, the moving party must show that disclosure will cause a clearly defined and serious injury; in this case, Plaintiff would have inherent difficulty in establishing it would suffer any injury

if Defendant's janitorial manuals are disclosed. See gen. Pansy, 23 F.3d at 786 (discussing the need to establish a clearly defined injury would ensure if material was publicly disclosed). Nor has Plaintiff alleged Defendant would suffer the requisite injury.

In addition, and perhaps tellingly, Defendant itself has not moved to seal its own materials. This could be because they are not of the kind likely to be sealed. Another court within this District has held that similar types of documents should not be sealed as they are not proprietary. Zavala v. Wal-Mart Corp., No. 03-5309, 2007 U.S. Dist. LEXIS 67282, *21, 2007 WL 2688934 (D.N.J. Sept. 12, 2007) (finding that a document entitled "'Wal-Mart Restroom Care Toilets and Urinals First,' which describe[s] techniques and instructions for cleaning and disinfecting toilet bowls, urinals and 'trash' receptacles" is not confidential and need not be sealed). Even a cursory review of those types of materials, the Zavala court concluded, "demonstrates the absence of any confidential or otherwise commercially sensitive nature of the excerpts from Wal-Mart's Maintenance Manual." Id. This Court finds the materials Plaintiff seeks to seal in this matter akin to those at issue in Zavala, and on the stated basis provided by Plaintiff, the Court finds that sealing such material on the present record is not

appropriate. Nonetheless, the Court will permit either party to explain, if they can and in appropriate detail, why such documents must be sealed before ordering that they be unsealed.

As such, Plaintiff's motion to seal will be denied, without prejudice. Either party may file a renewed motion, within 14 days hereof, addressing the requirements set forth in Local Civil Rule 5.3 and explaining why Zavala should not guide this Court in deciding any renewed motion. If neither party elects to file a renewed motion to seal, the Clerk will unseal those documents currently filed under temporary seal pursuant to Local Civil Rule 5.3(i)(8).

CONCLUSION

For the reasons expressed above, Defendant's motion for summary judgment (ECF No. 19) will be granted. Plaintiff's motion to seal (ECF No. 25) will be denied, without prejudice, and the parties shall have 14 days to file a renewed motion to seal. An appropriate Order will be entered.

Date: April 24, 2020
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.